HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 515 (S/S) OF 2005

Smt. Sarojini Dobhal, W/o late Laxmi Chandra, Rishikesh Range, Dutha Pani Forest Chauki Post, Post Office Gumani Wala, District Dehradun. .....Petitioner.

Versus

1. State of Uttaranchal through the Secretary Forest Department, Government of Uttaranchal, Dehradun.
2. Principal Chief Conservator of Forest, Uttaranchal, Nainital, Camp at 87 Rajpur Road, Dehradun.
3. Chief Conservator of Forest, Garhwal Region 85 Rajpur Road, Dehradun.
4. Conservator of Forest, Shivalik Circle, 5 Tilak Road, Dehradun.
5. Divisional Forest Officer, Dehradun Forest Division, 5 Tilak Road, Dehradun. .....Respondents.

Sri P.C. Jhingan, learned counsel for the petitioner.
Learned Standing counsel.

Dated: 06.05.2005

Hon'ble Rajesh Tandon, J.

Both the parties have agreed that let the matter be decided finally directing the respondents to consider the representation of the petitioner in the light of the facts.

Briefly stated, the husband of the petitioner late Sri Laxmi Chandra was daily wage employee of the Forest Department under the Rishikesh Range and he was expired on 16.10.2002 in a Bus Accident near Chiddarwala, District Dehradun.

In paragraph 3 of the writ petition, it has been stated that the petitioner was engaged on daily wage as Nursery Chowkidar at Lal Pani Nursery on compassionate ground after the death of her husband.

The grievance of the petitioner is that although the petitioner had been working on daily-wage basis as Nursery

Chowkidar at Lal Pani Nursery on compassionate ground after the death of her husband, but she is getting a consolidated salary of Rs. 1,740/- per month. Due to sudden death of her husband, the petitioner is facing acute financial crisis in maintaining the family of the deceased Udai Singh on such a meager wages.

In the year, 1999, the husband of the petitioner had preferred a writ petition being writ petition no. 24953 of 1999 (Laxmi Chandra Vs. State of U.P. and others) in Allahabad High Court. The Allahabad High Court had been pleased to issue an interim mandamus commanding the respondents to pay minimum-scale of salary regular Class IV employees. Operative portion of the aforesaid order is as under:-

"Learned Standing Counsel shall file counter affidavit within two months. Three weeks thereafter is granted to the petitioner to file the rejoinder affidavit.

List this petition after expiry of the aforesaid period along with writ petition No. 5427 of 1999.

Meanwhile, the petitioner shall be paid minumum scale of salary, which is being paid to regularly appointed Class IV employees."

Learned counsel for the petitioner has submitted that in view of the decision in ***Smt. Pushpa Lata Dixit Vs. Madhyamik Shiksha Parishad & others reported in 1991(18) A.L.R. Page 509,*** the petitioner is entitled to be absorbed under the Government Servant Dying in Harness Rules, 1974.

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked

on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled 5 to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

In ***Anju Misra v. General Manager, Kanpur Jal Sansthan, Kanpur 2004 (1) Page 201*** after relying upon the judgment in ***Santosh Kumar Misra v. State of U.P. and others 2002 (1) UPLBEC, 237***, it has been held as under:-

"9. According to the submission of the learned Counsel for the State, a daily wager or work charge employee who is engaged by the State Government or any department of the State Government cannot be treated as a Government Servant within the definition of Rule 2 of the aforesaid Rules. Qualifying the above argument, the learned Counsel for the State further submitted that though an employee who is not regularly appointed is covered by the definition in view of sub-clause (iii) of Rule 2(a) but in that case such employee must have put in three years continuous service, that too in regular vacancy in such employment. Since, the petitioner's father was earlier a daily wager or muster roll employee and later on worked as

work charge employee, therefore, it cannot be said that he was appointed regularly or had worked in regular vacancy."

"14. The practice of appointing daily wagers or work charge employees is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or work charge employees in the Government Department have been allowed to continue for years together, namely, 15 years, 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government Servant but, they are disposed with their engagement or attaining the age of superannuation. The practice of appointing such daily wagers and work charge employees has constantly been a matter of great concern for the judiciary and for that matter, the Apex Court has many a times issued directions for framing schemes so as to accommodate all daily wagers of long standing duration and work-charge employees as a regular employees. It would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many other department."

In Meean Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2002) 2 UPLBEC 1421, the said controversy has also been decided with the following observations:-

"A women cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis in view of Meena Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2000) 2 UPLBEC 1421 at 1422 (All)."

Further in view of the judgment of the Apex Court in the case of ***Pushpa Lata Dixit vs. Madhyamik Shiksha***

Parishad and others 1991 (18) ALR 509 and ***Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976,*** so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.

Similar view has been taken in the case of ***State of Manipur Vs. Thingujam Brojen (1996) 9 SCC Page 29, further in Smt. Saroj Devi Vs. State of U.P. 1999 (3) Educational and Service Cases Page 215,*** the benefit has also been extended to the temporary employees.

So far as the contention of the petitioner for absorbing her under the Dying in Harness Rules is concerned, the petitioner has already stated that she has already been engaged on daily-wage basis after the death of her husband and therefore, grievance of the petitioner regarding the absorption under the Dying in Harness Rules is no more available to her.

The sole contention of the petitioner is that she is not getting the salary, which her husband was getting.

So far as the emoluments are concerned, learned standing counsel has submitted that a proper representation may be made to the respondent no. 5 Divisional Forest Officer, Dehradun Forest Division, 5 Tilak Road Dehradun, who may dispose of the said order within a period of three months.

Liberty is given to the petitioner to make a representation to the respondent no. 5, who shall dispose it of within a period of three months by a speaking order.

Subject to the aforesaid observations, writ petition is disposed of.

(Rajesh Tandon, J.)

Dated: 06.05.2005
Rathour